

Civil Division – New Castle County

March 21, 2005

Honorable George H. Bunting
State Senator
Legislative Hall
P.O. Box 1401
Dover, DE 19903

Honorable Peter C. Schwartzkopf
State Representative
Legislative Hall
P.O. Box 1401
Dover, DE 19903

Re: Voting at Large for Candidates for Sussex County Council

Dear Senator Bunting and Representative Schwartzkopf:

You have asked whether state law mandates that candidates for election to Sussex County Council be elected at large. The statutory language that prompted the inquiry reads “[a]ll citizens qualified by the Constitution and laws of the State of Delaware to vote in the County and who satisfy the requirements for registration prescribed by law shall be qualified to vote for members of the county government.” 9 *Del. C.* §7002(w)(4). For the reasons set forth below, we conclude that this language does not provide for at large voting for members of Sussex County Council. This conclusion is based on several well-settled principles of statutory construction.

First, there is an obligation to read statutes together to form a harmonious result. *Coastal Barge v. Coastal Zone Industrial Control Board*, Del. Supr., 492 A.2d 1242, 1245-1246 (1985). If a statute as a whole is unambiguous, it must be interpreted

according to its literal terms. *Id.* This principle requires that §7002(w)(4) be read in conjunction with §7002(g)(4), which provides that, under specified circumstances, “the Department of Elections shall call a special election *in the district where the vacancy occurred*” (emphasis added). Because it does not provide for county-wide voting, the clear requirement of this provision is that the Department of Elections hold an election *only* in the district where the vacancy arises, not throughout all of Sussex County. Thus, there is no provision for an at large candidacy to fill a vacancy created before the end of a council member’s term. If there were at large voting for members of Sussex County Council in a general election, reading these provisions of §7002 together would create an unreasonable result. *Coastal Barge* at 1247. It would mean that all residents of Sussex County may vote for candidates for Sussex County Council from each councilmanic district in a general election but only residents of the councilmanic district where the vacancy occurred may vote in a special election. Because this interpretation is unreasonable, it should be rejected in favor of a reasonable interpretation. *Id.* The alternative, reasonable interpretation is that the General Assembly intended that qualified citizens who satisfy the requirements would be eligible to vote for members of the county government. It did not intend that §7002(w)(4) would grant residents of Sussex County to vote for all members of the county government. Indeed, it is this implied addition of the word “all” that creates the unreasonable result. *HMG/Courtland Properties, Inc., v. Gray*, Del. Ch., 729 A.2d 300, 306 (1999) (“This court should be chary about reading words into a statute that the General Assembly could have easily added itself.”) *See also*, Norman A. Singer, *Statutes and Statutory Construction*, §47:38, at 392 (Rev.2000)

(hereafter known as "*Sutherland Statutory Construction*"). Had the General Assembly intended such an interpretation, it would have done so explicitly, as it did in New Castle County. *See 9 Del. C. §1141* (specifically creating six districts from which members will be elected and one at large member who shall be Council President). Indeed, not only did the General Assembly decline to provide for at large voting when it enacted Senate Bill 702, which created the statute at issue, they tabled, and therefore rejected, House Amendment 1 to Senate Bill 702, which would have created two at large seats on Sussex County Council. *See Sutherland Statutory Construction* §48:18 at 482-483 ("Generally the rejection of an amendment indicates that the legislature does not intend the bill to include the provisions embodied in the rejected amendment.")

It is instructive to compare more closely the language of *9 Del. C. §1141*, (which provides for both election at large for the President of New Castle County Council and election from council districts for the remaining council seats) to the language of *9 Del. C. §7002(w)(4)*. The General Assembly plainly intended to distinguish "at large" from "by district" voting in New Castle County since the same statute expressly provides for both. The language of §1141 that provides for election by district is very similar to language requiring election by district in *9 Del. C. §7002(w)(4)*. There is no evidence of legislative intent for the words "shall be elected from council districts" in §1141 to be interpreted to mean something different from the words "district from which they are elected" in §7002(w)(4). Comparison of provisions for election to Levy Court in Kent County further strengthens our conclusion.

We are mindful of 9 *Del. C.* §4103, which expressly requires that candidates for Levy Court commissioners in Kent County be elected by a majority of voters of the district where the candidate resides. Thus, election is by district for members of county government in both New Castle and Kent Counties. To determine that candidates for Sussex County Council would be elected at large would be to conclude that the General Assembly intended to treat election of county officials in Sussex County differently from elections in the remaining counties. We find nothing in the statutes or legislative history that suggests such an intent. In fact, as noted above, the defeated amendment to Senate Bill 702 demonstrates that the General Assembly intended to treat election to Sussex County Council the same as to the remaining counties – by district, rather than at large.

There is at least one other settled principle of statutory construction that supports the same result. Where a practice pursuant to a legislative enactment is left untouched by a legislative body, it may be presumed, under applicable principles of statutory interpretation, that that construction was intended by the legislative body. *IAVA v. State*, Del. Supr., 126 A. 627, 630 (1924). *See also Sutherland Statutory Construction* §49:04 at 19. (“Where there has been a long continued administrative interpretation of a statute which has two or more reasonable interpretations, the rulings of the administrative body should be controlling.”). The practice of election by councilmanic district in Sussex County has continued without interruption since §7002 was first enacted in 1970. Therefore, it may be presumed that the General Assembly intended that members of Sussex County Council be elected exclusively from and by the residents of the councilmanic districts where the candidates for election reside.

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For these reasons, we conclude that 9 *Del. C.* §7002(w)(4) does not create a system of at large voting for members of the Sussex County Council. We conclude that the longstanding practice of election of candidates by district rather than by county is the correct interpretation of 9 *Del. C.* §7002(w)(4). Please do not hesitate to contact us if you have any questions.

Very truly yours,

Malcolm S. Cobin
State Solicitor

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CC: Honorable M. Jane Brady, Attorney General
Philip Johnson, Opinion Coordinator